

unwcl

Final Law 1.  
Report Series No. 41  
(Date).

THE TRIAL OF

Hauptsturmführer Wilhelm Artur Konstatin WAGNER

Report by the Norwegian Representative,

J. Aars Rynning.

Trial by the Eidsivating Lagmannsrett, August, <sup>- October</sup> 1946,

Trial by the Supreme Court, April, 1947.

Public Prosecutors: Statsadvokat Harald Sund and Aktor Per Helweg,

Counsel for the Defence: Høyesterettsadvokat Adam Hjorth.

Charge:

The accused, Hauptsturmführer Wilhelm Artur Konstatin WAGNER was charged with having committed war crimes in that he, in violation of the laws of humanity, was concerned in the deportation and death of 521 Norwegian Jews.

Indictment:

Defendant WAGNER was charged by the Director of Public Prosecutions with having committed war crimes which were in violation of:

# 1, cf. # 3, of the Provisional Decree of 4th May, 1945, which decides the punishment for acts which were committed in violation of the laws and customs of war by enemy citizens or other aliens who were in enemy service or under enemy orders, and if the said acts were committed in Norway or were directed against Norwegian citizens or Norwegian interests and which augment the punishment if:

(a) the act caused grave bodily injury, grave suffering, prolonged deprivation of freedom, or extensive damage to property,

(b) the act resulted in death, even though this outcome was not intended,

(c) chapters 21, 22, and 25 of the Civil Criminal Code were repeatedly violated, or

(d) particularly aggravating circumstances were present, cf.

# 233 of the Civil Criminal Code which fixes the punishment for acts which unlawfully cause another person's death and which augments

the punishment if particularly aggravating circumstances are present, cf # 225 of the Civil Criminal Code fixing the punishment for acts which unlawfully result in bringing someone into slavery, cf.

Law No. 3 of 6th July, 1945 which formally authorises the application of capital punishment.

Statement of Facts:

Defendant WAGNER was chief of Section IV<sup>b</sup> of the Sipo which dealt with the Jewish question.

On 24th September, 1942, WAGNER issued orders to the Norwegian Police to arrest all Jewish men and their families for their deportation to Germany. The defendant was in charge of the transport of those Jews, altogether 503 grown-ups (including women) and 28 children under 14. These Jews were first taken to Stettin and from there transferred to German "Vernichtungslager": only 10 of the whole transport have returned to Norway. The others were executed or gassed. The surviving 10 had been kept in internment camps until the end of the war. The defendant organised and executed the unlawful deportation despite the fact that he, as a higher-ranking officer in the Sipo, must have known the fate that awaited the victims.

The defendant came to Norway in February, 1941 and took over Section IV b under REINHARDT's supervision. Section IV b was concerned with the question of Jews, freemasons and the church. The defendant himself dealt with the Jewish question only. His task was to learn the reaction of the Norwegian people to the various regulations applying to Jews and to keep Berlin informed of these reactions.

Though the defendant was not directly responsible for the enforcement of these regulations, yet he was the holder of the key position and knew what was going on.

The persecution of the Jews<sup>in Norway</sup> was started in the summer of 1941, with the order that the Jewish inhabitants had to hand in their radio sets within three days. In September when Oslo was in a state of emergency, several Jews were arrested<sup>here</sup>, and soon after some Jews were arrested and shot in Trondheim and in other northern towns. Some Jews were sent to forced labour but, on the whole, things were comparatively calm during that year.



On 10th September, 1942, 10 Jews were arrested near Oslo. On 22nd October a frontier policeman was killed on a train which had 10 Jews among the passengers. These 10 Jews were arrested and the day after their families ~~suffered~~ were also taken into custody.

On the night of 26th October about 300 male Jews were arrested in Oslo and sent south. On the following day the law on the confiscation of Jewish property came into force, and on 17th November the law on the registration of Jews.

On the night of 26th November 300 more Jews were arrested and taken on the German steamer the DONAU lying in Oslo harbour. On the same night all Jewish internees in Norway were taken on the DONAU so that there were altogether 531 Jews on board.

According to witnesses, the Jews were treated very roughly during the embarkation.

In Stettin the Jews were locked into railway carriages where they were kept without food or drink for 36 hours. Later they were taken to Auschwitz where all women and children and old men were gassed at once while the able-bodied men were sent to forced labour.

Sentence of the Lagmannsrett on 8th October, 1946.

Defendant WAGNER was sentenced to death by shooting.

Notes on the sentence by the Lagmannsrett.

The Court established that the deportation of the 531 Norwegian Jews was a war crime at variance with the laws of humanity and the laws and customs of war.

The Court could not take it for granted that the defendant at the time of the deportation was aware that camp Auschwitz was a "Vernichtungslager" and that the victims would be gassed. But the Court was confident that the defendant was acquainted with Hitler's "Mein Kampf" and the "Nuremberg Laws" directed against Jewry already before the war, and that he knew of the Führer's steadily growing aggressive policy against the Jews.

The Court found it particularly aggravating that the defendant had already since 1935, dealt with the question of Jews and had, as he openly admitted, been sent to Norway as an expert on the Jewish question. He had declared himself an anti-Semite and had maintained that Jews should be regarded as Germany's enemies.

The Court came to the conclusion that the defendant had wilfully taken part in the deportation of the Norwegian Jews fully knowing that they were facing slavery and many of them even death.

The majority of the judges were of the opinion that the defendant had deserved the maximum penalty foreseen by Norwegian law, namely the death sentence, particularly as his crime had caused the death of 521 innocent people though this outcome was not premeditated. Neither could the majority accept the plea of superior orders.

The minority voted for penal servitude as they found that the Quisling government and their police force had to bear a considerable part of the responsibility for the arrest and the deportation of those Jews. Furthermore they argued that the defendant had acted on superior orders and not having held a leading position in the Gestapo, could not alone have prevented the execution of the Berlin orders.

#### Appeal.

Defendant WAGNER appealed to the Supreme Court basing his appeal on the following arguments:

(a) that the reasons for the sentence given by the Lagmannsrett were incomplete and even contradictory in parts. Furthermore the statement was not sufficient to show whether the law had been rightly applied. The defendant maintained that the Lagmannsrett had not only failed to take into account but even omitted to deal with his plea that German officials were kept ignorant of all secret matters, the knowledge of which was not absolutely necessary for the performance of their duty,

(2) that it was wrong of the Lagmannsrett to state that the deportation of the 531 Jews must be regarded as a war crime in se. The <sup>ment</sup> intern~~ment~~ of Jews for the duration was a security measure dictated by the events of the war,

(3) that the punishment decided by the Lagmannsrett was too severe, the majority of the judges ~~not~~ having failed to consider that he had acted on superior orders and that in his capacity of a subordinate he could not have prevented the carrying out of the decision of the German and Quisling Governments.

#### Decision of the Supreme Court on 30th April, 1947.

The Supreme Court sentenced the defendant to 20 years penal servitude.



Notes on the decision of the Supreme Court.

The President of the Court in dealing with defendant WAGNER's appeal said that the first point could be dismissed as the errors that had appeared in the grounds, were not of sufficient import and had in no way influenced the outcome.

When discussing the severity of the punishment decided by the Lagmannsrett, the President of the Court agreed with the minority of that Court <sup>that</sup> as it had been established that the defendant held a very unimportant position in the Gestapo and that there was nothing to show that he had taken any initiative in the action. His part had been to ~~deliver~~ <sup>pass on</sup> the orders from Berling to the Chief of the State Police and to execute the orders of his superiors. He was sure that if the defendant had refused to obey orders, he would have <sup>had</sup> paid for the refusal with his life.

On the other hand, it had been ascertained that the defendant, when superintending the embarkation of the Jews, had personally gone to see to it that more provisions were handed out to them.

He, therefore, suggested to fix the punishment to 20 years penal servitude. The sentence was carried by a majority of three to two.

-----